

Application No.10/567,631
Nationalization of PCT/EP2004/051702
Attorney Docket No. WSP242US
Response to Notice of Non-Responsive Reply dated February 26, 2009
Date: March 26, 2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Matter of United States Patent Application:

Applicant(s): Gabriel Blume et al.

Examiner: Jennifer Ann Berrios

Application No.: 10/567,631

Art Unit: 4121

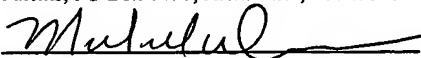
Filed: February 8, 2006

For: COSMETIC COMPOSITION
PROMOTING OXYGEN
TRANSPORT INTO THE SKIN

Confirmation Number: 1303

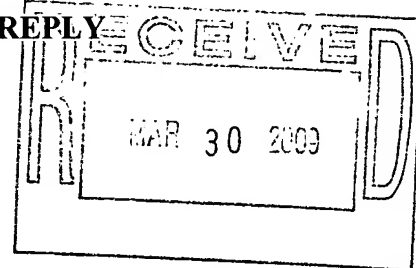
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RESPONSE TO NOTICE OF NON-RESPONSIVE REPLY

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450



Honorable Sir:

This is in reply to the Notice of Non-Responsive Reply dated February 26, 2009 requiring an election between four species.

With due respect to the Examiner, an election was made in the prior response to restriction requirement. In particular it was stated that:

"Group 1) directed to claims 13-36 is elected with traverse. Claim 13 is the only independent claim and includes "lipid conjugate", referred to by the Examiner as "specific lipid conjugate", even though the word "specific" does not appear in the claims. All other claims are directly or indirectly dependent upon claim 1 [sic 13] and thus all also contain "lipid conjugate" (Species 1). "

The Examiner may not agree with the claims listed by the Attorney for the Applicant that read on Specie 1 "lipid conjugate" but it is the Applicants position that all of listed claims 13-36 in fact read on that specie. If the Examiner is objecting on the ground that that the Applicant asserted that claims 13-36 read on elected Specie 1 for "lipid conjugate" **the Applicants elect Specie 1 claims to "lipid conjugate claims 13-17, 23, 33 and 36 in accordance with the claims specifically listed by the Examiner, with traverse.**

Nevertheless, as was stated in the prior response, all of claims 13-36 read on "lipid conjugate" since they all depend directly or indirectly from claim 13 that specifically includes "lipid conjugate". All dependent claims must then of necessity also contain "lipid conjugate."

The mere addition of additional components, i.e. "lipid conjugate solvent", "nicotinic compound" and/or "alcohol", in subclaims, to claims already containing "lipid conjugate", does not remove "lipid conjugate" from the claims in which additional components are added.

The restriction should therefore be withdrawn for two major reasons, i.e. a) there is unity of invention and b) even if there weren't unity of invention, all claims read on species (1).

Respectfully submitted,



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Dated: March 26, 2009

MLD/mjk

Transmittal Letter to Commissioner (Patent Pending)

Docket Number

WSP242US

Address To
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Title of Invention

COSMETIC COMPOSITION PROMOTING OXYGEN TRANSPORT INTO THE SKIN

First Named Inventor	Gabriele Blume
Application No.	10/567,631
Filing Date	February 08, 2006
Examiner	Jennifer Ann Berrios
Art Unit	4121

Transmitted herewith is:

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Transmittal Letter to Commissioner (Patent Pending)

Docket Number

WSP242US

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